

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 BUSINESS CASUAL HOLDINGS, LLC,

4 Plaintiff,

5 v.

21 CV 3610 (ER)

6 YOUTUBE, et al.,

7 Defendants.

Conference  
(via Telephone)

8 -----x  
New York, N.Y.  
9 July 29, 2021  
4:30 p.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13  
14 APPEARANCES

15 HOGAN DUFF, LLP  
Attorneys for Plaintiff

16 BY: ANDERSON J. DUFF

17 WILSON SONSINI GOODRICH & ROSATI  
Attorneys for Defendants

18 BY: JASON B. MOLLIK

1 (Case called)

2 MR. DUFF: Your Honor, this is Anderson Duff on behalf  
3 of Business Casual Holdings.

4 THE COURT: Good afternoon.

5 MR. MOLLICK: Good afternoon, your Honor, this is  
6 Jason Mollick on behalf of the defendants YouTube, Google, and  
7 Alphabet.

8 THE COURT: Good afternoon to you.

9 This matter is on for a premotion conference. I note  
10 for the record that it is being conducted by phone.

11 This is the first time that the parties have appeared  
12 before me, so, Mr. Duff, let me begin with you. Tell me a  
13 little bit about your case.

14 MR. DUFF: Your Honor, this is a case that at its  
15 heart is about whether or not YouTube has a reasonably  
16 implemented repeat infringer policy that would allow them to  
17 take advantage of the protections of the safe harbor described  
18 in Section 12 of the Digital Millennium Copyright Act.  
19 Business Casual believes that --

20 THE COURT: I'm sorry, Mr. Duff. There appears to be  
21 background static. Are you on speaker phone?

22 MR. DUFF: No. I was trying to use headphones to make  
23 it clear. Maybe it's not helping. I'll take them off right  
24 now, your Honor. Sorry about that.

25 Your Honor, is that better?

1 THE COURT: That's much better.

2 MR. DUFF: I apologize for that.

3 As I was saying, YouTube's repeat infringer policy is  
4 not reasonable, not capable of being reasonably implemented on  
5 its face because it can be gained by bad actors and it is not  
6 reasonable as implemented here for two reasons.

7 The first, their published policy is three strikes and  
8 you are out. That is the policy that we had available to us.  
9 The underlying infringer here received three copyright strikes  
10 under YouTube's system and that meant that channel should have  
11 been terminated and all associated channels.

12 At least two circuits that have considered this issue,  
13 and not many have, have found that a reasonably implemented  
14 repeat infringer policy, at a minimum, means enforcing the  
15 policy that you have published.

16 We also believe that the repeat infringer policy as  
17 implemented here is not reasonable because YouTube is  
18 requiring -- they imposed an adjudication requirement on the  
19 definition of a repeat infringer and that is contrary -- when I  
20 say that, I mean that YouTube will not treat a party as a  
21 repeat infringer for the purposes of their repeat infringer  
22 policy and termination of a repeat infringer until there has  
23 been a lawsuit and a court has found that infringer liable for  
24 copyright infringement.

25 That adjudication requirement runs counter to Section

1 512 of the Digital Millennium Copyright Act, which in several  
2 other sections recognizes the difference between an infringer  
3 and an adjudicated infringer and it does not say adjudicated  
4 infringer in the subsection discussing the need for a  
5 reasonably implemented repeat infringer policy.

6 The adjudication requirement also runs counter to the  
7 legislative history of the Digital Millennium Copyright Act.  
8 And, finally, it runs counter to the Second Circuit's own  
9 interpretation of repeat infringer.

10 Again, not many courts have considered this issue, but  
11 courts, and one of them is the Second Circuit, had a  
12 dictionary. In *EMI Christian Music Group v. MP3tunes*, the  
13 defendant was trying to argue that there needed to be an  
14 adjudication of infringement, and the Second Circuit said no.  
15 It says repeat infringer, which is not defined in the statute,  
16 so let's look at a dictionary. The Second Circuit in that case  
17 said that someone who interferes with a repeat infringer is  
18 someone who interferes with one of the exclusive rights of the  
19 copyright again or repeatedly. The adjudication requirement  
20 that's being imposed here makes the YouTube's repeat infringer  
21 policy not reasonably implemented. Because YouTube does not  
22 have a reasonably implemented repeat infringer policy, it  
23 cannot claim the protections of the safe harbor.

24 THE COURT: Let me ask you, what constitutes, from  
25 your perspective, a strike under YouTube's infringer policy?

1 MR. DUFF: Well, your Honor, it might be a question  
2 that YouTube would be better answering because it's their  
3 policy, but their published policy was such that when a party  
4 like my client noticed that their content was being infringed  
5 upon by some other channel on YouTube, a party like my client  
6 could submit a DMCA takedown notice and a copyright strike  
7 would be applied to the infringer. If the infringer collected  
8 three strikes within a 90-day period, that's it, they are  
9 terminated. They are out permanently along with any associated  
10 channels.

11 THE COURT: So the only thing that constitutes a  
12 strike is someone saying that their content has been infringed  
13 upon.

14 MR. DUFF: That is correct, yes.

15 THE COURT: You think that that's unreasonable rather  
16 than a limitation of their policy because they, YouTube,  
17 requires something more.

18 MR. DUFF: Your Honor, you are absolutely right, the  
19 something more is one of the reasons that YouTube does not have  
20 a reasonably implemented policy. The other reason or one of  
21 the other reasons is that in this case the underlying infringer  
22 here, and we have a separate lawsuit, and I believe we filed in  
23 this case notice of related cases, but the underlying infringer  
24 received three strikes within 90 days. YouTube acknowledged  
25 that in writing to my client that the underlying infringer had

1 received three copyright strikes. Under the policy, they  
2 should have been terminated.

3 In fact, YouTube did terminate this underlying  
4 infringer in, I think, early March, but then -- so the  
5 underlying infringer is a Russian state-owned media company,  
6 and a representative of the Russian government apparently  
7 complained about the termination of that channel, and within  
8 hours the channel was reinstated.

9 One final point that I'll make. When that channel,  
10 this repeat infringer, was reinstated, all of their videos were  
11 reinstated minus the three videos that my client found that  
12 infringed on my client's copyrighted content.

13 As soon as all these other videos, we are talking  
14 about thousands of videos, were reinstated, the underlying  
15 infringer immediately started removing or making private, we  
16 are not sure -- they took them offline so that the public  
17 couldn't see them and that we can't see them, but they started  
18 taking offline thousands of videos immediately, and they did  
19 that for a long time. We can look and see that they have never  
20 done anything like that before. It strongly suggests that  
21 there is a lot more infringing activity on that channel and the  
22 associated channels that we did not find and now we will not be  
23 able to find, absent discovery.

24 THE COURT: Let me ask you. Tell me about what's  
25 being infringed here. Your client, as I understand it,

1 produces documentaries, historical documentaries.

2 MR. DUFF: That's correct, your Honor, with the focus  
3 on business.

4 THE COURT: As I understand it, the Russian outfit  
5 took three snippets from three of your documentaries and ran  
6 them on their channels?

7 MR. DUFF: No, your Honor. It's that quite that  
8 simple. It was far more than three snippets. There are three  
9 infringing videos that were up and they are slightly different,  
10 each one. One involves a seven-second clip that is an entire  
11 scene from one of my client's documentaries, heavily produced  
12 scene. Another contains just under two minutes of content that  
13 had been taken from various different places of my client's  
14 documentaries, and then the third one was a live-streamed video  
15 that contained significantly more. It was eight minutes and 50  
16 seconds, I believe, of my client's content. So that eight  
17 minutes and 50 seconds was made up of smaller snippets that  
18 were taken the same way the second video I described was, of  
19 somewhere between two seconds and seven or ten seconds each.

20 THE COURT: And you said that you can no longer see  
21 the films, or whatever they are, of this RT Arabic channel,  
22 correct?

23 MR. DUFF: Well, we have the infringing videos, but  
24 they have taken thousands of videos offline. So I think there  
25 is a strong -- that strongly indicates to me that there is a

1 lot more infringing content that was there that we just didn't  
2 find, and now we don't -- we can't look for it anymore. I  
3 don't know why.

4 THE COURT: You know more about this stuff than I do  
5 from a technology standpoint certainly. When you say that they  
6 took them offline, does that mean that they have put them on  
7 the shelf and they are not showing them to the world, or  
8 something else?

9 MR. DUFF: It means that we do not have access to  
10 them. I am not the most tech-savvy person. But when you have  
11 an account with YouTube, you can designate videos as private  
12 and then nobody can watch them. But there are varying levels  
13 of that. But they could have deleted them wholesale. I don't  
14 think that there is a way for us to tell.

15 What matters, though, is that we can't see them  
16 anymore. If they are blocking us from being able to see them,  
17 then they are blocking other people from being able. I am not  
18 a hundred percent sure about this, your Honor, but I think they  
19 are completely unavailable to the public.

20 One other thing that I do want to mention about the  
21 infringing videos that I just described, the three that we know  
22 of, is that when they took all these different portions of my  
23 client's videos, they removed my client's watermark and then  
24 replaced it with their own and then, before they uploaded those  
25 infringing videos to YouTube, they played with the saturation



1 and the brightness levels of the videos in a deliberate attempt  
2 to evade the standard technical measures that YouTube has in  
3 place to automatically detect copyright infringement. Those  
4 are clear indications of bad faith and all of this was  
5 communicated by my client to YouTube quite a while ago.

6 THE COURT: Let me ask you this. If you say that they  
7 have taken these things offline, you can't see them, presumably  
8 the rest of the public can't see them. Putting aside any other  
9 damages that you may be seeking, isn't that a good thing?

10 MR. DUFF: Well, your Honor, the fact that the repeat  
11 infringer policy that YouTube has in place right now can be  
12 gamed by any bad actor and that YouTube profits off that is not  
13 a good thing. Maybe I should explain, if your Honor wouldn't  
14 mind, briefly, just how easy it is for someone to game the  
15 system because of the adjudicated infringer requirement.

16 The policy says that if you receive three strikes in  
17 90 days, then your channel and all associated channels are  
18 terminated. However, you have to get those three strikes  
19 within 90 days. However, because there is this adjudication  
20 requirement, the Digital Millennium Copyright Act itself says  
21 that after someone files a counternotification that says, we  
22 have a good-faith belief that the material was removed by  
23 accident, then the rights holder, in this case my client, has  
24 between 10 and 14 days to file a lawsuit, and that's the only  
25 way to protect your rights.

1           So because YouTube imposes this adjudication  
2 requirement on users, rights holders can only protect  
3 themselves from a bad actor that is willing to file a  
4 fraudulent counternotification by filing a lawsuit almost  
5 immediately.

6           And in this case we know that the underlying infringer  
7 filed the counternotifications in bad faith. We know that  
8 because the snippets -- all of the infringing content that was  
9 taken from my client's videos that appears in one of the  
10 infringing videos was also all used in another one of the  
11 infringing videos. That video contained more, but it used all  
12 of that infringing content exactly. And with the first  
13 infringing video, the infringer got in contact with my client  
14 and said, yes, we copied your content. By the way, we  
15 accidentally filed a counternotification, which we will  
16 retract. But then they went ahead and filed a  
17 counternotification as to this other infringing video that has  
18 the exact same infringing content and one other  
19 counternotification. By doing that, they have forced my client  
20 to file a lawsuit within 10 or 14 days to protect his rights  
21 and avoided receiving three strikes within 90 days.

22           If your Honor has more technical questions about  
23 YouTube's procedures, my client has the deep understanding of  
24 YouTube's workings because my client is a content creator.  
25 That's why this is such an important issue to him. If your

1 Honor has any questions, he is on the line.

2 THE COURT: Let me ask you another question, Mr. Duff.  
3 The way that you describe it, it seems that it's just as easy  
4 to game the system from the front side as from the back side.  
5 What I mean by that is, it sounds like it's just as easy for a  
6 bad guy, let's say in this case the defendant, to affirmatively  
7 or preemptively file a notification of infringement against you  
8 and then file two more within 90 days to give you three  
9 strikes. So what's to stop a bad guy from doing that if all  
10 that has to happen is that you just file a notice of  
11 infringement?

12 MR. DUFF: Your Honor, that is an excellent question.  
13 You are right, bad actors are always going to try to find a way  
14 to game the system.

15 The problem here is that the adjudication requirement  
16 is not only not included in the Digital Millennium Copyright  
17 Act, if you read the other provisions of the DMCA safe harbor,  
18 Section 512, it's clear that Congress did not want parties to  
19 have to sue to enforce their rights. So while it may be that  
20 the system could be gamed on the other side, that's how  
21 Congress intended it to be.

22 Now, they didn't intend it to be gamed, I hope, but  
23 there is a safety valve in the language of the provision that  
24 requires a reasonably implemented repeat infringer policy. It  
25 says that repeat infringers need to be terminated in

1 appropriate circumstances. So that does give a bit of an  
2 escape valve there, but the escape valve should not be punting  
3 to the courts and forcing the parties to file lawsuits and take  
4 up a federal court's time.

5 THE COURT: Let me just ask you a couple more  
6 questions, these will be yes or no questions, so I can get over  
7 to Mr. Mollick.

8 Question No. 1, is it your understanding that  
9 YouTube's adjudication policy, as you have referred to it,  
10 requires you, once you filed a notice of infringement and had  
11 been served with a counternotice of infringement, to go to  
12 court and file a lawsuit? Yes or no.

13 MR. DUFF: Yes.

14 THE COURT: Is it your understanding that the DMCA  
15 precludes or prohibits services like YouTube from requiring  
16 parties to go to court to establish their rights?

17 MR. DUFF: Your Honor, it does not prohibit it, but  
18 the adjudication requirement is not in this provision.

19 THE COURT: So the answer is no.

20 Mr. Mollick.

21 MR. MOLLICK: Yes, your Honor.

22 THE COURT: Why should I let you make this motion to  
23 dismiss? There is an allegation that your policy is  
24 insufficient, does not comply with the terms or the spirit of  
25 the DMCA, and that you are imposing overly rigorous

1 restrictions or requirements on content providers like Business  
2 Casual.

3 MR. MOLLICK: Sure. To begin with, counsel's  
4 description of YouTube's policy is actually simply not true.  
5 It's not something I'm saying that goes beyond the pleadings.  
6 That's something that is in the pleadings itself and it is  
7 attached to the pleadings and exhibits.

8 Also, more fundamentally, it happens to be relevant  
9 for purposes of our motion to dismiss. One of the things that  
10 we mention our letter, which I think speaks for itself, but I'm  
11 happy to go through the reasons, the requirement to maintain  
12 and repeat infringer policy, notwithstanding our disagreements  
13 about what that means, and I will and am more than happy to get  
14 into that, that requirement is merely a prerequisite for a  
15 defendant to assert an affirmative defense under the DMCA.

16 But in this case YouTube does not need to assert that  
17 affirmative defense because based on the facts as alleged in  
18 the complaint, the plaintiff cannot state an infringement claim  
19 against YouTube, regardless. So when we get to the repeat  
20 infringer policy, that's really an issue that's going to be  
21 litigated only if we get past the motion-to-dismiss stage.

22 I think the fundamental disconnect here with the  
23 plaintiff's complaint is that they kind of put the cart before  
24 the horse. They are litigating a defense before they have  
25 actually proven or at least can get past the pleadings stage

1 and show that they can state a claim to begin with.

2 That's actually very obvious from the complaint  
3 because the very first thing that they ask for is something  
4 that the First Amendment prohibits. The very first thing that  
5 they ask for in terms of their claims for relief is an order  
6 from this Court to compel YouTube to terminate not TV-Novosti's  
7 infringing content, that's already happened, YouTube has  
8 already removed all that content, but they want this Court to  
9 order a private platform to terminate a user and all of its  
10 other channels and all of its noninfringing and lawful content.  
11 No Court can order a private platform to do that under the  
12 First Amendment, and certainly the DMCA doesn't even come close  
13 to requiring such a thing.

14 If your Honor would permit, I'm happy, since we have  
15 had a long discussion about the repeat infringer policy, I want  
16 to address some of those arguments first, and then I'm happy to  
17 go over the reasons why the motion to dismiss should be  
18 granted.

19 THE COURT: OK.

20 MR. MOLLICK: With respect to counsel's  
21 characterization of YouTube's policy, there is no adjudication  
22 requirement. That assertion is completely false. The policy  
23 only requires adjudication if there is a dispute between the  
24 claimant and the counterclaimant as to whether infringement  
25 actually occurred. If there is no dispute and there is no

1 counternotification submitted, then there is nothing that needs  
2 to be adjudicated. YouTube terminates accounts every single  
3 day, based on takedown notices, without requiring adjudication.

4 Here, in this case, TV-Novosti has submitted  
5 counternotifications under penalty of perjury disputing  
6 Business Casual's claims that an infringement occurred. Now, I  
7 understand they say with respect to one of them, TV-Novosti  
8 withdrew one of the counternotices. That's true, but that's  
9 only with respect to one of the videos. For two other  
10 infringing videos, they submitted counternotifications and  
11 never withdrew them.

12 I suspect that the reason why, your Honor, is because  
13 TV-Novosti realized that even if they copy content from  
14 plaintiff's videos, the content is not copyrightable to  
15 plaintiff to begin with, or at least they have a very strong  
16 copyrightable defense. They also very likely have a very  
17 strong fair use defense, which is something that is being  
18 litigated in the related case because the amount of content  
19 that was copied was extremely minimal.

20 We have those counternotifications there. The  
21 plaintiff was telling YouTube one thing. The other defendant  
22 in the other case, TV-Novosti, is telling YouTube something  
23 else. YouTube is caught in the middle. We are not judge,  
24 jury, and executioner, and the DMCA does not require us to be  
25 judge, jury, and executioner. That wouldn't be appropriate.

1 THE COURT: Can I ask you something about TV-Novosti.  
2 I understand that it is or it used to be a state-owned station.  
3 I take it that it's a substantial business. This is not some  
4 teenager with a TikTok channel.

5 MR. MOLLICK: They allege that they are funded by the  
6 Russian government. I think there is some evidence of that.  
7 And I actually believe there is notice on YouTube's website  
8 that says that they may be funded in whole or in part by the  
9 Russian government. I don't know whether that happens to be  
10 true or not.

11 Yes, they are massive content creator. They have 39  
12 channels. RT Arabic is just one of their 39 channels. There  
13 is also 38 other channels here that never hosted any allegedly  
14 infringing content. There is also thousands upon thousands --  
15 I haven't been able to count it, but I can tell you it's  
16 thousands and thousands of hours of other content here that is  
17 not allegedly infringing.

18 That actually goes, your Honor, towards the issue of  
19 whether YouTube is being reasonable here in implementing their  
20 policy. Think of what the plaintiff is asking for here. They  
21 are claiming that the DMCA somehow requires us to remove not  
22 just the three infringing videos that they are complaining  
23 about, but all, thousands and thousands of hours of lawful,  
24 noninfringing content that has nothing to do with this case.  
25 Just because the plaintiff accuses them of infringement,



1 somehow YouTube is required by law to remove everything before  
2 the plaintiff can even prove its case? That's not what the  
3 DMCA requires.

4           The DMCA calls for the plaintiff to file its lawsuit  
5 and vindicate its claims, and they are doing that. They sued  
6 TV-Novosti, that's an active lawsuit pending before Judge  
7 Koeltl, and YouTube has told the plaintiffs, and we said, go  
8 litigate your case against the alleged infringer, show us that  
9 you are right, show us that TV-Novosti is wrong and then come  
10 back to us and we can execute our policy accordingly. But the  
11 DMCA does not require a private platform to assume that the  
12 claimant is right in an instance where the takedown notice is  
13 being disputed.

14           Counsel referred to this adjudication requirement in  
15 cases in other circuits. The one case that they cite in their  
16 letters is the Cox case in the Fourth Circuit. That's an  
17 excellent example of how this case has nothing to do with the  
18 cases that they cite. In Cox, the defendant received millions,  
19 and I'm not exaggerating, millions of takedown notices that  
20 were uncontested, and the platform never even took down the  
21 videos, let alone suspended the users.

22           In this case we have one user who has submitted three  
23 takedown notices with respect to just a few seconds' worth of  
24 content and those takedown notices are being disputed. It is  
25 absolutely reasonable and appropriate for YouTube in that

1 circumstance to say, look, we don't know who is right. There  
2 are arguments on either side. Go litigate your case. Then  
3 come back to us and then let us know how that turns out.  
4 That's built into the statute itself, your Honor, because if  
5 you look at the statute there is no mention about how a repeat  
6 infringer policy must be worded or carried out. The statute is  
7 intentionally vague. It says that a website has to reasonably  
8 implement a repeat infringer policy and the policy has to call  
9 for a termination of infringers in appropriate circumstances.  
10 Those phrases reasonable, appropriate, intentionally give the  
11 platforms discretion and flexibility, depending on the  
12 circumstances of the case, and that's what YouTube is doing  
13 here.

14 THE COURT: I take it there has been no adjudication  
15 of your adjudication policy, by which I mean to say that no  
16 court has to date at least found it unreasonable to require  
17 competing claims to be brought to court?

18 MR. MOLLICK: I'm not aware of any. More generally,  
19 I'm not aware of any court that's ever held that a policy that  
20 says that disputed claims have to be litigated in court is  
21 unreasonable under the DMCA.

22 THE COURT: What do you want to do, Mr. Mollick, in  
23 terms of your motion?

24 MR. MOLLICK: With respect to the motion, your Honor,  
25 the problem with plaintiff's complaint is that based on the

1 facts that are alleged, I don't think there is a claim here  
2 that they can allege against Google, so we don't really get to  
3 the repeat infringer policy in the first place.

4 So there is two different types of claim. There is  
5 the direct infringement claim where they accuse YouTube of  
6 directly infringing the content issue. Then there is the  
7 secondarily liability claims, which break down into two parts.  
8 There is contributory liability and vicarious liability.

9 With respect to direct infringement, we will obviously  
10 explain this further in our motion, but YouTube cannot be an  
11 infringer for two reasons. Number one, when the plaintiff  
12 uploaded their content onto YouTube's platform, they licensed  
13 the content to YouTube, and it is settled law that a licensor  
14 cannot sue a licensee for copyright infringement. They just  
15 can't.

16 In addition, YouTube is nothing more, at least with  
17 respect to TV and videos, it's nothing more than an automated  
18 hosting platform. There is no allegation and there can be no  
19 plausible allegation that YouTube itself or YouTube employees  
20 somehow conspired with TBN to infringe plaintiff's content.  
21 All it did was host content that was created and uploaded by  
22 TBN. There is no volitional infringing content by YouTube.

23 Again, under settled Second Circuit law, the lack of  
24 volitional conduct by the alleged infringer means there is no  
25 claim of direct infringement. That's the direct infringing

claims.

With respect to the secondary claims, contributory liability requires that the defendant had intentionally contributed to someone else's infringement after acquiring knowledge of that infringement. But YouTube did the opposite of that. The plaintiff concedes in their complaint that when YouTube was notified of the infringing content, YouTube took it down.

In fact, as Mr. Duff alluded to on the call just a few minutes ago, the complaint specifically alleges that TBN undertook measures to deceive YouTube into being unable to catch TBN's infringing activity, alleged infringing activity, which completely contradicts any notion that YouTube contributed to TBN's infringing activity.

Finally, with respect to vicarious liability, vicarious liability requires that the defendant have failed to exercise a right and ability to stop the infringement, which, again, is the exact opposite of what YouTube did, and all of that is in the complaint itself. When YouTube was notified of the infringement, YouTube immediately took it down.

Now, I'll say one other thing about the timing of the takedown notices. There is three different videos. With respect to one of the videos, and this is the longer one that counsel referred to, YouTube took that video down extremely quickly, within 72 hours. I think counsel concedes in their

1 letter, at least they hint in their letter, that that takedown  
2 cannot possibly give rise to any liability for YouTube because  
3 it was so quick.

4 For the two other videos at issue, YouTube took nine  
5 days and 24 days, respectively, to remove them. But the reason  
6 why YouTube took some additional time for those videos is  
7 because the total amount of content in those two videos was ten  
8 seconds, ten seconds of allegedly infringing content, which  
9 raises serious concerns as to whether that alleged infringement  
10 is actually a fair use. As the correspondence attached to the  
11 complaint shows, the reason that YouTube did not remove the  
12 content immediately or within 24 or 72 hours is because YouTube  
13 was concerned that the plaintiff was not taking principles of  
14 fair use into account. By the way, fair use is important here  
15 because not only was the content so de minimus, ten seconds,  
16 but the content at issue is really historical public domain  
17 images. The only originality that they claim is the way that  
18 those images were displayed. So there is correspondence  
19 between the plaintiff and YouTube.

20 Again, I'm not straying anywhere beyond the complaint.  
21 This is all attached to the complaint where YouTube says,  
22 please give us more information as to whether these alleged  
23 acts of infringement are actually fair use.

24 The plaintiff's first response was to accuse YouTube  
25 of supporting the Russian government. The plaintiff then

1 thought better of it and sent YouTube more information. Then,  
2 after a few more days, YouTube took down the content. Because  
3 it took those actions, YouTube cannot be liable as a secondary  
4 infringer, so we don't even get to the repeat infringer policy  
5 issues.

6 THE COURT: I've heard enough.

7 I will grant defendants the ability to make their  
8 motion to dismiss. It will be on the following schedule. The  
9 motion will be filed by August 18. The response will be filed  
10 by September 8 and the reply by September 15. So that's three  
11 weeks, three weeks, one week.

12 MR. DUFF: Are we able to respond to that, by any  
13 chance?

14 THE COURT: Are you able to respond to what?

15 MR. DUFF: We can respond in our filing.

16 THE COURT: You have the dates.

17 Is there anything else that we should do today, Mr.  
18 Duff?

19 MR. DUFF: We will respond to the points made by  
20 opposing counsel in our responsive memorandum.

21 THE COURT: Anything else from you, Mr. Mollick?

22 MR. MOLLICK: I think that's it. Thank you, your  
23 Honor.

24 THE COURT: Thank you all. We are adjourned. Please  
25 stay well. (Adjourned)